IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Raju Vs. State of Rajasthan
(D.B. Criminal Jail Appeal No.148/2003)

D. B. Criminal Jail Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 29-11-2002 in Sessions Case No.55/2001 passed by Shri Arif Mohd. Madani, RHJS, Additional Sessions Judge RamganjMandi District Kota.

Date of Judgment: July 17, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE SANGEET LODHA

Mrs. Bharti Sharma, Amicus Curiae, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Challenge in this appeal is to the judgment dated November 29, 2002 of the learned Additional Sessions Judge Ramganj Mandi District Kota, whereby the appellant was convicted and sentenced as under:-

U/s.302/34 IPC:

To suffer imprisonment for life and fine of Rs.500/-, in default to further suffer six months simple imprisonment.

U/s.342 IPC:

To suffer rigorous imprisonment for one month.

Sentences were directed to run concurrently.

2. It is the prosecution case that on June 5, 2001 informant Bhuli Bai (Pw.1) arrived at Police Station Kanwas at 10.30 AM and orally apprised that after the death of her son Chhitar some 12 years back his wife Bali Bai entered into Nata-marriage with Kanhaiya. Both Kanhaiya and Bali Bai wanted to grab the hut belonging to Chhitar which was mortgaged with Bheema (since deceased). Around 10 AM on the said day while the informant and Bheema were proceeding towards police station to lodge the report in that regard, they were belaboured by Kanhaiya and Raju (appellant). Raju caught hold of Bheema and Kanhaiya inflicted knife blow on his back who was removed to the hospital Kanwas and Police took him to Kota in an unconscious state. On that report case under sections 307 and 341/34 IPC was registered and investigation commenced. In the course of investigation Bheema succumbed to the injuries and Section 302 IPC came to be added. On completion of investigation charge sheet was filed against appellant and Kanhaiya. In due course the case came up for trial before the learned Additional Sessions Judge Ramganj Mandi District Kota. Charges under sections 342/34, 302 and 302/34 IPC were framed against Kanhaiya and the appellant, who denied the charges and claimed trial. Kanhaiya, who was released on parole, did not return back and on June 20, 2002 he was declared absconder. Trial against appellant was however proceeded. As many as 15 witnesses were examined by the prosecution in support of its case. Appellant claimed innocence in his explanation under section 313 CrPC, but did not examine any witness in defence. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. We have heard learned Amicus Curiae and learned Public

Prosecutor and with their assistance examined the record.

4. Death of Bheema was indisputably homicidal in nature. As per postmortem report (Ex.P-16) following ante mortem injuries were found on the dead body :-

> 1. Stab wound over back of abdomen 3 x 0.5 cm x deep
> 2. Stab wound over anterior aspect of abdomen 0.8 x 0.2cm x deep 2cm back to mid line 9cm below umbilicus
>
> Dr. P.K.Tiwari (PW.15) who performed autopsy on the dead body opined that the cause of death was hemorrhage following injury to Rt. kidney and intestine.

5. Since main accused Kanhaiya is not before us, we proceed to scan the evidence of the prosecution vis-a-vis appellant Raju only. According to FIR informant Bhuli Bai (Pw.1) and Resham Bai (Pw.2) were the eye witnesses of the occurrence. On the date of her examination at the trial Bhuli Bai was 70 years of age. In her deposition she stated that Kanhaiya inflicted knife blows on the back and abdomen of Bheema and Raju had caught hold of him:-

> "कन्हैयालाल ने चाकू पेट में व पीठ पर मारा था और राजू ने पकड रखा था"

It is not clear from her evidence as to whether Raju caught hold of Bheema, prior to injuries inflicted by Kanhaiya or afterwards. Resham Bai (Pw.2), sister in law of deceased, however did not depose that Raju caught hold of Bheema. She only saw Raju running. According to her it was Kanhaiya who inflicted blows with knife on the person of Bheema. Resham Bai was not declared hostile and her testimony binds prosecution. It can be

utilized by defence to make dent in the prosecution case (vide Raja Ram Vs. State of Rajasthan (2005) SCC (Cri) 1050).

6. There is nothing on record to show that appellant Raju had enmity with the deceased. From the evidence of Bhooli Bai and Resham Bai the prosecution could only establish the presence of appellant at the time of incident. But mere presence by itself is not sufficient to convict the appellant for the offences charged. The prosecution, in our opinion, has failed to establish that appellant shared common intention with Kanhaiya in committing the offence. Charge under section 342 IPC also could not be proved.

7. For these reasons, we allow the appeal and set aside the impugned judgment dated November 29, 2002 of the learned Additional Sessions Judge Ramganj Mandi District Kota. We acquit the appellant of the charges under sections 302/34 and 342 IPC. The appellant Raju, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

(Sangeet Lodha),J. (Shiv Kumar Sharma)J.

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